

Managing the Resources of the China Seas: China's Bilateral Fisheries Agreements with Japan, South Korea, and Vietnam

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[The press is filled with reports on the multiple conflicts erupting in the China seas: territorial conflicts, resource conflicts, and historical conflicts. Rarely is there serious discussion of the efforts by the nations of the world's most dynamic economic region to achieve amity and cooperation on issues of mutual interest. Fisheries and the resources of the sea is one such realm, and David Rosenberg explores the impressive progress among the powers of the region in attempting to regulate fishing, while highlighting the continued conflicts and difficulties in regulating fishing at a time of sharp decline in catch. Japan Focus.]

One of the major under-reported stories of China's regional diplomacy is the slow but steady progress it has made negotiating a network of bilateral agreements with Japan, South Korea, and Vietnam to manage their common fishery resources.

For centuries, the China Seas have provided abundant fisheries for food security and employment opportunities for their coastal countries, China, Japan, South Korea, and Vietnam. Flushed all year round by several large rivers, the flat and shallow seabeds of the Yellow Sea, the East China Sea, and the South

China Sea are among the world's most productive fishing grounds. However, as coastal urban populations have grown and as fishing technology has improved, competition for the shared fish stocks of the China Seas has intensified considerably. Fish catch rates began to decline in the 1970's with sharper declines registered in the mid-1980's. With bottom trawlers coming into widespread use in the 1990's, many species are now threatened with collapse.

Given the migratory pattern of many species and the common pool nature of the China Seas, no single country would be able to manage or conserve their common migratory fish stocks. Despite historical conflicts and territorial disputes, the coastal countries of the China Seas have good reason to negotiate to avoid a tragedy of the commons in their common waters.

The precipitating factor for the recent negotiations was the enactment of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994. UNCLOS grants coastal states the right to declare sovereign rights and resource control over an Exclusive Economic Zone (EEZ) up to 200 nautical miles off its coastlines. China, Japan, South Korea, and Vietnam all quickly ratified UNCLOS and declared their respective EEZ's. In the case of countries bordering semi-enclosed seas such as the Yellow Sea, the East China Sea and the South China Sea, where EEZ claims overlap, UNCLOS call for establishing joint resource management areas and provides guidelines for doing so, even where conflicting territorial claims are unresolved. Hence, collective action became imperative to avoid a collapse of

regional fisheries. UNCLOS provided a framework for pursuing collective action between the coastal states.

China signed an agreement with Japan in 1997 for cooperative fisheries management in the East China Sea; it took effect in 2000. The Sino-South Korean agreement for cooperative fisheries management in the Yellow Sea was signed in 1998 and took effect in 2001. China signed two agreements with Vietnam on fisheries management and boundary delineation in the Beibu or Tonkin Gulf that took effect in 2004. The Sino-Japanese and Sino-South Korean agreements are both for 5 years; the Sino-Vietnamese agreement is for 15 years [1].

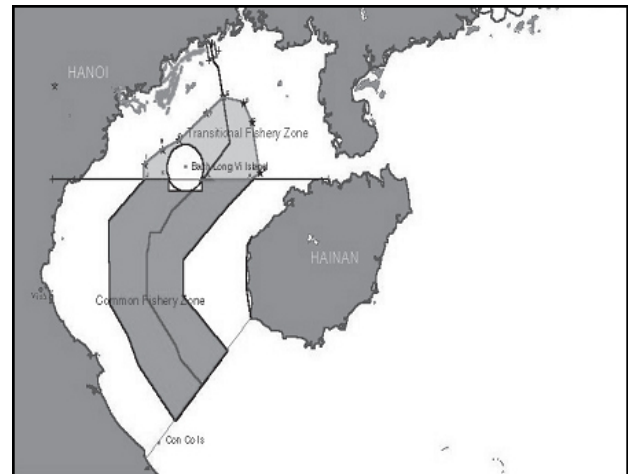
The agreements address three key issues. First, they reaffirm each country's exclusive rights over fishery resources and fishing activities in its own EEZ. Second, they establish general principles for reciprocal fishing access in each other's EEZ. Third, the agreements create a cooperative management regime for their shared fishery resources.

Each agreement established a Joint Fishery Committee (JFC), including representatives from each country appointed by each government, as well as several commissioners. Although each JFC has somewhat different scope and authority, they all have several common functions, such as research on the status of fisheries, consultation with fishing industry interests, and recommendations to fisheries management authorities on access to fishing zones. They may make recommendations on fishing quotas, types of species to be caught, and other conditions for fishing.

Each JFC establishes an area for joint fisheries management in the common seas between the coastal countries. In the Beibu/Tonkin Gulf, China and Vietnam have designated a Common Fishery Zone, and Waters in Transitional

Arrangements. (See Map 1.)

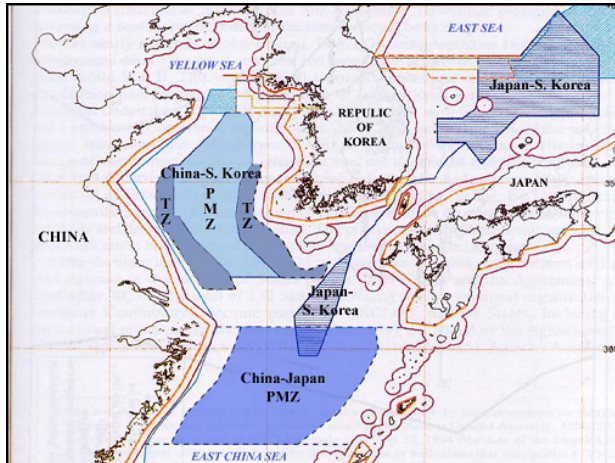
Map 1. Delimitation Line and Joint Fishing Zones in the Tonkin Gulf



Source: Thao, 2005, p. 26

In the East China Sea, China and Japan have designated a Provisional Waters Zone (PMZ). In the Yellow Sea, China and South Korea have designated Provisional Waters and the Waters in Transitional Arrangements. (See Map 2.) The "Waters in Transitional Arrangements," located on each side of the joint resource management area, provide some flexibility for each country in restricting fishing in formerly open waters. After four years, each country has to phase out its fishing activities in the Transitional Zone (TZ) of the other country and gradually conform to the coastal state's EEZ jurisdiction.

Map 2. Agreed Zones of Sino-Japan/Sino-Korean Fisheries Agreements



Source: Xue, 2004. p. 206

The different types of management zones represent an effort to preserve some traditional fishing communities and to mitigate the impact of fishing restrictions necessary to achieve sustainable yields. For example, in addition to the Waters in Transitional Arrangements mentioned above, the Sino-Vietnamese agreement also includes a Buffer Zone for Small-sized Fishing Boats. Many small-sized fishing boats near the China-Vietnam shoreline have limited communications and navigation equipment. Some are not even motorized. Illegal entry by mistake is inevitable and understandable. Hence, Chinese and Vietnamese negotiators decided to establish this buffer zone to avoid unnecessary disputes by unintentional illegal entry.

The JFC's have the power to decide on conservation and management measures, including the allocation of fishing quotas and the maintenance of fishing order. They all must ensure that fisheries are not endangered through over-exploitation. Recommendations and decisions are made by consensus, according to the agreement. JFC meetings are held at least once per year, with additional ad hoc meetings as necessary.

The major work of each JFC is to determine

each year how many fishing vessels of each country to permit in these joint resource management areas. The JFC employs a "quantity control approach" that quantifies the total allowable catch (TAC) of several target species, the status of each resource, the extent of traditional fishing activities, modern fishing methods and management, and then derives the allowable number of vessels. For example, in 2001, the Sino-Japanese JFC set the maximum number for Chinese fishing vessels in the Japanese EEZ as 900 with no more than 600 operating at the same time. A total of 317 Japanese trawlers, purse seines, and hook fishing vessels were licensed to enter China's EEZ. Japanese fishermen were allowed to fish up to 78,000 tonnes in China's EEZ and China was allowed 70,000 tonnes in Japan's EEZ. There were 20,612 fishing vessels allowed to operate in their PMZ with a total allowable catch (TAC) of 2.136 million tones [2, p. 208].

Fishing vessels of one country need to apply for a license to fish in the other country's EEZ. They have to comply with the terms of the joint fisheries agreement as well as the domestic laws and regulations of that country. Any violation is subject to legal procedures of the country controlling the EEZ where the fishing takes place. In the case of seizure or detention, the fishing vessels and crew must be promptly released upon posting a bond or other form of security.

The biggest difference among the agreements is that the Sino-Vietnamese agreement for the Beibu/Tonkin Gulf fisheries also incorporates a permanent maritime boundary delimitation. By contrast, there is no permanent maritime boundary agreement between China and Japan or between South Korea and China. The boundaries used in the latter two agreements are provisional, pending final delimitation of their currently overlapping EEZ claims.

In the Sino-Japanese and Sino-South Korean agreements, enforcement in the joint resource

management area is to be carried out by the flag state of each fishing boat. In the Sino-Vietnamese agreement, enforcement is carried out by each coastal state within its EEZ boundary delimitation.

One notable feature of the Sino-Korean agreement is that it provides for joint Chinese and Korean monitors on patrol vessels in a Transitional Zone on each side of the Common Fishery Zone. They may board and inspect fishing vessels of both parties. The flag state of each vessel is responsible for compliance with the terms of the JFC regulations.

The Sino-Vietnamese Fisheries Agreement is the first one in East Asia that establishes a cooperative fisheries management program within demarcated maritime zones. It has more management authority than the other two agreements. The Joint Fishery Committee for Beibu/Tonkin Gulf is the only JFC entitled to make rules and regulations for the Common Fishery Zone to enforce these limits. It is a permanent body with full operational authority, including a dispute settlement mechanism [2].

The agreements adopted by China, Vietnam, and South Korea will greatly diminish their traditional fishing grounds and reduce their fishing industry. China has started a program to scrap 30,000 fishing boats and relocate 300,000 fishermen by 2010. About one million households have been seriously affected. Japan has set up a 6 billion yen fund to support its fishermen facing unemployment because of the agreement [3, p. 195]. Each country has started to take the painful steps necessary to shrink fishing grounds, cut back fishing fleets, and recycle redundant labor in order to conserve and manage a vital resource.

From a resource management perspective, the main limitation of these agreements is that they focus on managing fishing activity in designated areas that only comprise part of the fishery ecosystem. Unregulated waters still

exist for unrestricted exploitation of fish stocks. For example, the Sino-Japanese agreement provides a Current Fishing Pattern Zone around the disputed Diaoyu/Senkaku Island where traditional fishing may continue unrestricted, thereby avoiding the territorial dispute over the ownership of the island. However, many fish stocks migrate seasonally from the adjacent management zone in the East China Sea to these unrestricted fishing waters.

The contracting parties have made an effort to carry out periodical joint patrols to prevent illegal fishing. They have also conducted monitoring, surveillance and control of fishing vessels including boarding and inspection. However, no workable enforcement mechanism has been established, except for the joint enforcement arrangement in the China-South Korea TZ's. No contact points have been established for the exchange of information about violations, or a joint program to provide information to fishermen about the laws and regulations of contracting. Many fishermen find it difficult to accept that they cannot fish in waters where they have done so for years. Hence, monitoring and enforcement efforts need to be strengthened to improve the effectiveness of the agreements [3, p. 196].

Another limitation is that the JFC's have little transparency or accountability. They make their decisions behind closed doors with no public participation or dispute settlement mechanisms for redress of grievances. The JFC's generally do not publish their deliberations or the data upon which their decisions are based, or the results of scientific findings. Hence, it is difficult to fully understand the rationale for the regulations.

Some important issues remain unresolved. For example, South Korea does not recognize the Sino-Japanese fisheries management regime. It contends that its own EEZ includes part of the northern end of the East China Sea, and that it was not consulted in the negotiation of the

Sino-Japanese agreement. The migratory fish stocks, unaware of these conflicting boundary claims, are vulnerable to South Korean fishermen in these contested waters.

Notwithstanding these limitations, the agreements are important pioneering efforts. This is the first maritime boundary delimitation agreement China has reached with any of its coastal neighbors. It is the second maritime demarcation for Vietnam. The Sino-Vietnamese agreements, in particular, are models for cooperative fisheries conservation and management [4, p. 20].

The major significance of all these treaties is that they were signed in accordance with UNCLOS and based on two main objectives, namely, the peaceful settlement of fishery disputes and the establishment of a system for sustainable fishing for the communities around the China Seas. They are all the result of political compromise among countries with strikingly different levels of economic development, domestic political systems, and foreign policy concerns.

Joint fisheries conservation and management efforts have been effective in some areas, for example the North Pacific salmon fishery. They have been notably ineffective in others, for example, the North Atlantic cod fishery. There is still a long way to go to fully achieve sustainable fisheries in the China Seas. The efforts described here may still be too little, too late to conserve the remaining fish stocks. However, this evolving network of bilateral

agreements for cooperative fisheries resource management is a constructive step in the right direction.

NOTES:

[1] Yu, Yunjun and Yongtong Mu, "The new institutional arrangements for fisheries management in Beibu Gulf," *Marine Policy* March 2005.

[2] Xue, Gui Fang, "China's Response to International Fisheries Law and Policy: National Action and Regional Cooperation," *Doctoral Dissertation, University of Wollongong, Centre for Maritime Policy*, October, 2004.

[3] Valencia, Mark J., and Yoshihisa Amae, "Regime Building in the East China Sea," *Ocean Development & International Law*, 34:189-208, 2003

[4] Zou Keyuan, "The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin," *Ocean Development & International Law*, 36:13-24, 2005

[5] Thao, Nguyen Hong, "Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf," *Ocean Development & International Law*, 36:25-44, 2005

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